COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

INVESTIGATION BY THE DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY ON ITS OWN MOTION INTO THE ASSIGNMENT OF INTERSTATE PIPELINE CAPACITY	D.T.E. 04-01

REPLY COMMENTS OF KEYSPAN ENERGY DELIVERY NEW ENGLAND

KeySpan Energy Delivery New England ("KeySpan" or "the Company")[1] hereby submits its Reply Comments in this proceeding by the Department of Telecommunications and Energy (the "Department") inquiring into whether the upstream capacity market is sufficiently competitive to modify the existing mandatory method for upstream capacity assignment, established in Natural Gas Unbundling, D.T.E. 98-32-B (1999), to allow for voluntary assignment of such capacity.

Initial Comments were filed on March 1, 2004 by Amerada Hess Corp. ("Hess"), the Attorney General of the Commonwealth ("Attorney General"), Bay State Gas Company ("Bay State"), The Berkshire Gas Company, Blackstone Gas Company, Energy East Solutions, Inc., ("Energy East"), Fitchburg Gas and Electric Light Company d/b/a Unitil, KeySpan, National Energy Marketers Association ("NEMA"), New England Gas Company, NStar Gas Company ("NStar Gas"), and Select Energy, Inc. ("Select").[2]

KeySpan maintains its position that the upstream capacity market is not at this time sufficiently competitive to remove or modify the Department's mandatory capacity assignment requirement and that the slice-of-system approach treats marketers fairly while ensuring

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1 The three Massachusetts local distribution companies doing business as KeySpan Energy Delivery New England are Boston Gas Company, Colonial Gas Company and Essex Gas Company.

2 On February 27, 2004, Dominion Transmission, Inc. filed a Petition for Limited Participant Status but did not file comments.

customers are afforded the flexibility, reliability and diversity inherent in the LDCs' capacity portfolio. KeySpan's Reply Comments are made for the purpose of assisting the Department and responding to the issues raised by some commenters on whether the Department should: (1) transition from mandatory capacity assignment; (2) change the slice-of-system approach; (3) modify certain operational practices ; and (4) expand this proceeding to encompass other matters.[3]

I. Mandatory Capacity Assignment Must Remain in Place Since the Upstream Capacity Market for Massachusetts is Not Workably Competitive

A. An "Improved" Market Is Not a Workably Competitive Market

The Department has stated that only when there is a fully sustainable competitive upstream capacity market for Massachusetts would it reconsider a change from mandatory capacity assignment. D.T.E. 98-32-B at 26-27. Specifically, the Department decided that, in order for it to reconsider a change from mandatory capacity assignment, two preconditions must be met. Those preconditions are that (1) the Federal Energy Regulatory Commission ("FERC") price controls on interstate capacity must be lifted; and (2) the number of marketers holding firm rights to interstate capacity must increase. Id. at 27. The Department was clear that it would not attempt to create a competitive market for Massachusetts if that market could not exist on its own or would falsely benefit only some at others' expense. Id. at 25. Rather, the Department's goal was to ensure service reliability and to prevent shifting of costs onto firm ratepayers in the absence of a fully competitive market. Id. at 25-26.

No marketer in this proceeding has argued that the upstream capacity market for Massachusetts is workably competitive. Neither has any marketer asserted that the Department's

[3] Silence by KeySpan in regard to any particular argument, assertion of facts, or statements of position in the

preconditions for considering a change from mandatory to voluntary capacity assignment have been met.[4] In fact, Energy East, one of the three marketers submitting comments, states that the Department will likely find that the upstream capacity market serving New England "is not as competitive as one might wish." Energy East Initial Comments at 3. And Hess, another of the three, acknowledges the difficulty of obtaining capacity on one of the two main pipelines serving Massachusetts and the current static nature of the market. Hess Initial Comments at 14 and 17.

Hess is the only marketer that contends that the "conditions required by the Department for a fully competitive wholesale market have improved" since Natural Gas Unbundling, 98-32-B (1999). Hess Initial Comments at 9. And it alone presents information with respect to this proposition. Hess, however, does not address the Department's preconditions nor does it even contend that there is a workably competitive upstream capacity market for Massachusetts. Not only would mere signs of market improvement fall short of satisfying the Department's criteria for reconsidering mandatory capacity assignment, but also, the information provided by Hess does not accurately capture the state of the market in Massachusetts. Hess does not take into consideration offsetting developments that have occurred over the last several years that have resulted in the upstream capacity market for Massachusetts remaining constrained.

Specifically, Hess contends that the market has "improved" because there are (1) additional resources and (2) many new market participants who purchased capacity into "the region." Hess Initial Comments at 12. But additional resources in and of themselves do not manifest an efficient upstream capacity market. The additional resources cited by Hess are (i) increased imports of LNG volumes by Distrigas and (ii) the 1999 Maritimes and Northeast

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initial comments should not be interpreted as assent to such argument, assertion or position.

[4] NEMA makes only a conclusory statement that there should be voluntary capacity assignment. It should also be noted that of the ten marketers now active in KeySpan's Massachusetts service territory, only three addressed concerns by submitting comments in this proceeding.

Pipeline ("M&NE") interconnect to the Tennessee Gas Pipeline Company ("Tennessee" or "TGP") at Dracut, Massachusetts. Hess Initial Comments at 10. However, the increase in volumes from additional imports of LNG and the M&NE interconnect have merely offset significant increases in demand from new customers, additional requirements of existing customers and new demand from gas-fired electric generation plants. NStar Initial Comments Appendix A, New England Natural Gas Infrastructure - Staff Report of FERC, December 2003. And with respect to M&NE, no marketers serving Massachusetts have contracted for this capacity.

Hess states that, since 1999, there are "many new market participants" who have purchased capacity into "the region." Hess Initial Comments at 12-13. However, the list of market participants provided by Hess to support this assertion relates to all of the New England States, and Hess makes no differentiation between the type of capacity, whether it be mainline capacity or lateral-capacity. Moreover, the list of market participants appears to include many more wholesale traders than marketers operating in Massachusetts. In addition, a review of the Tennessee index of customers and capacity in Hess' Table A reveals that of the 51,000 MMbtu per day of capacity that Hess lists as holding for New England on Tennessee, 45,000 MMbtu per day has a primary delivery point to White Plains, New York. Similarly, the increased LNG volumes imported by Distrigas since 1999 that Hess cites are not used solely for Massachusetts but are for all of the New England states and for some areas beyond New England. Hess represents in its Table A that 24 percent of Tennessee and 10 percent of Algonquin Gas Transmission Company ("Algonquin" or "AGT") capacity is held by non-LDCs and non-generators. Yet, only 3 percent and 1 percent respectively are held by marketers serving Massachusetts. As noted in KeySpan's Initial Comments, of the marketers active in the

Company's Massachusetts service territory, only three now provide service to all categories of commercial and industrial ("C&I") customers regardless of the customer's load factor. A more accurate representation of the marketers holding capacity and the amount of capacity held for Massachusetts and New England is set forth below:

Non-LDC and Non-Power Generating Capacity Holders

New England Marketers	Tennessee	Algonquin
Amerada Hess Corp.	6,000	13,000
Energy East Solutions, Inc.	10,400	0
Select Energy, Inc	10,000	0
Sempra Energy Trading Corp.	13,000	0
Sprague Energy Corp.	20,000	0
Total Marketer Held Capacity	59,400	13,000
Total Capacity per Hess at 13	1,887,229	2,337,374
Percent Held by Marketers	3%	1%

Of particular significance, the "many new market participants" listed by Hess have not signed up for new capacity on pipelines serving Massachusetts except for Hess who subscribed for HubLine. According to Hess, it has signed capacity contracts of anywhere from one to three years with rights of first refusal. Hess Initial Comments at 14. But no other commenter refers to any other marketer entering into pipeline capacity agreements. And even Hess has not made a long-term capacity commitment. In order for pipelines to invest in expanding the infrastructure for capacity in Massachusetts, they require shippers to enter into long-term contractual commitments, generally for at least ten years. For example, the HubLine project in Massachusetts on which Hess was able to procure capacity would not have been built absent ten to twenty year capacity contracts executed by LDCs and electric generators. KeySpan, other LDCs and power generators contracted for 244,500 MMBtus or 88 percent of the available capacity. The other subscribers are Hess with a 10,000 MMBtu two-year contract and a wholesaler with a 20,000 MMBtu five-year contract. The same scenario holds true for the M&NE Pipeline that was built to transport additional supply for Canadian resources. The total subscribed MDQ on the M&NE pipeline is 640,575 MMBtu and all subscriptions were made by LDCs, producers, power generators and wholesale traders. Without the long-term contracts of the LDCs and power generators, the pipelines would not have been built. Tables showing the subscription of these two pipelines are shown below:

HubLine Shippers

Shipper	MDQ	Contract Begin Date	Contract End Date
Amerada Hess Corp	10,000	11/01/2003	10/31/2005
Bay State Gas Company	20,000	11/24/2003	10/31/2013
Boston Gas Company d/b/a Keyspan Energy Delivery	20,000	11/24/2003	09/30/2013
Bristol & Warren Gas Company	4,000	11/24/2003	10/31/2013
Colonial Gas Company d/b/a Keyspan Energy Delivery	25,000	11/24/2003	11/30/2013
Exelon New England Power Marketing	140,000	11/24/2003	10/31/2023
Fall River Gas	5,000	11/24/2003	10/31/2013
Providence Gas Company	500	11/27/2003	10/31/2023
TXU Portfolio Management Company LP	20,000	11/01/2002	10/31/2007
Total Subscribed Capacity	244,500		
Total Mass. Marketer Held Capacity	10,000		
Percent Capacity Held by Mass. Marketers	4%		

Source: www.duke-energy.com

M&NE, U.S. : Index of Customers

Shipper	MDQ	Contract Begin Date	Contract End Date
Bangor Gas	35,000	04/04/2000	04/03/2020
Bangor Gas	50,000	07/07/2000	07/06/2015
Boston Gas Company d/b/a Keyspan Energy Delivery	43,200	12/01/1999	03/31/2007
Casco Bay Energy Co., L.L.C.	105,000	01/01/2000	12/31/2019

Emera Offshore Inc.	30,240	11/01/2002	11/30/2009
Mobile Natural Gas Inc.	185,335	12/01/1999	11/30/2019
Mosbacher Operating LTD.	1,800	12/01/1999	11/30/2009
Newington Energy, LLC	90,000	05/01/2002	04/30/2022
Salmon Resources LTD	100,000	12/01/1999	11/30/2014
Total Subscribed Capacity	640,575		
Total Mass. Marketer Held Capacity	0		
Percent Capacity Held by Mass. Marketers	0%		

Source: www.duke-energy.com

Thus, the Department's precondition that there be additional marketers holding firm capacity rights to serve Massachusetts has not been met. In spite of Hess' characterization of developments, there are fewer marketers serving Massachusetts than previously, and there has been no significant increase in the amount of firm pipeline capacity that these marketers hold.

B. Hess' Comparison with Voluntary Capacity Assignment in Other States is Invalid because it Ignores the Structural Differences with Massachusetts

Hess contends that the market in the "Northeast states" has thrived when mandatory capacity assignment was lifted. Hess Initial Comments at 15. In support of this broad generalization, Hess references only New Jersey and New York. Hess Initial Comments at 16. However, there are significant differences between market conditions in these two states and Massachusetts. While Hess attempts to argue that upstate New York is similar to Massachusetts's position at the end of the pipeline, Hess acknowledges that there are other pipelines feeding into the primary pipeline, Dominion, in upstate New York. Hess Initial Comments at 16. And although certain areas of upstate New York may be at the end of pipelines, unlike Massachusetts most of these areas are not capacity constrained. Furthermore, Hess fails to point out that the majority of the natural gas customers in New York are located downstate, encompassing the New York City metropolitan area, which has many more direct interstate pipelines feeding the distribution systems. As to the greater number of marketers in

New York State, that should be expected under any unbundling scheme considering that the state includes one of the larger metropolitan areas in the United States. Hess fails to show that the markets of New York or New Jersey are sufficiently comparable to that of Massachusetts to be instructive as to capacity assignment.

Hess also fails to provide sufficient information about the capacity assignment programs in New York and New Jersey to support its comparison. For instance, in New York, marketers are required to guarantee firm primary point capacity for the five peak winter months. With the New York LDCs holding much of the firm primary point capacity and the bulk of capacity needs falling within those five winter months, the New York program functions very similarly to the Massachusetts mandatory program. More importantly, the capacity assignment programs in each of the other states are components of complex unbundling programs that cannot be compared in pieces and must be viewed within the broader conditions and policies of each state—conditions and policies that differ significantly from those prevailing in Massachusetts.

Finally, Hess' basic premise that other Northeast states thrive when mandatory capacity assignment is lifted, is itself unsupported. In fact, Massachusetts under mandatory capacity assignment has experienced greater C&I migration of load than New York. According to Hess' Exhibit AHC-2, 32 percent of the 2002 non-residential load has migrated to transportation in New York. In contrast, 46 percent of KeySpan, 55 percent of Berkshire, 25 percent of Bay State, and 27 percent of NStar's load has migrated for the same time period.[5]

C. Hess' Transition Plan Provides Insufficient Customer Protections

Hess' transition proposal does nothing to respond to the Department's reliability concerns other than creating these reliability problems piecemeal as each step of the transition takes place.

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[5] There is no percentage provided by Hess for load migrating to transportation in New Jersey.

First, Hess would have the LDCs reduce the marketers' mandatory assignment when firm capacity contracts expire. Hess Initial Comments at 18-21. This would reduce the amount of firm capacity held by LDCs, and there would be no obligation for the marketers to replace it with their own contracts for firm capacity. The result would be that Massachusetts would have less firm capacity to serve its customers. Second, Hess would have the LDCs refrain from entering into capacity contracts for load growth and, instead, take back marketer-assigned capacity to meet this demand. This would have the same result of reducing firm capacity to serve Massachusetts customers. Until conditions change sufficiently to allow LDCs to be freed of their obligation to serve, these "transition" proposals present all the reliability and cost-shifting concerns that have made voluntary capacity assignment unacceptable to the Department.

In a related proposal, Hess also asserts that there is "excessive" capacity held by LDCs in for growth and to backstop load that has moved to the competitive market and that this should be "turned back for the pipelines to re-market or should be released to the secondary market on a non-recallable basis . . . ." Hess Initial Comments at 14. However, it provides nothing to support this assertion, and the contention is misplaced. The Department is required to ensure "a necessary energy supply for the Commonwealth with a minimum impact on the environment at the lowest possible cost." G. L. c. 164, § 69I. Accordingly, KeySpan and other Massachusetts LDCs are required by the Department to plan for necessary supply and capacity to meet existing customer needs and to meet forecasted growth. Therefore, they periodically submit comprehensive forecast and supply plans to the Department for review and approval. Through this supply planning process, the proper amount of capacity to serve the LDCs' existing and future customers is determined.[6] As these plans show, rather than possessing excessive pipeline capacity, the Massachusetts LDCs generally supplement firm pipeline capacity with LNG and LPG throughout much of the winter peak period in Massachusetts. Therefore, there is no basis for Hess to argue that LDCs hold excess capacity that should be released. Like Hess' "transition proposals" this proposal should be rejected because it would reduce firm pipeline capacity for Massachusetts customers in a market that is pipeline capacity constrained.

Because Hess and other marketers do not have the same obligation to plan for and procure capacity resources as LDCs do (D.T.E. 98-32-B at 58-60), adoption of the Hess transition and "turn-back" proposals would jeopardize or render impossible the Department's and the LDCs' ability to fulfill the statutory obligation. While Hess acknowledges that some reliability guarantee would be required of marketers before LDCs could be relieved of the planning and procurement obligation, it offers no specifics for the Department to consider.

II. Slice-of-System Should be Maintained as an Appropriate Interim Solution

The slice-of-system approach, as addressed in KeySpan's Initial Comments, provides important customer protections while creating a fair allocation scheme among marketers. It must be kept in mind that the capacity assigned is the customer's capacity, and while a few marketers have raised a concern in their comments about the administrative burdens of such a portfolio, the diversity of that portfolio protects the customers' reliability of supply. Nevertheless, KeySpan has worked with marketers to reduce administrative burdens while maintaining the benefits of slice-of-system. As addressed below, some of these accommodations were specifically

[6] The Attorney General, on the other hand, raises the opposite concern—that the LDCs may not have sufficient capacity for growth and to backstop migrated load. Attorney General Initial Comments at 3-4. This is an issue best addressed in supply plan proceedings.

incorporated in the original terms and conditions ("T&Cs"). Other accommodations, also addressed below, are new but fit within the general guidelines of the T&Cs.[7].

A. Accommodations in KeySpan's Terms and Conditions

1. Minimum Threshold for Acceptance of Capacity

The T&Cs establish a minimum threshold before a marketer is required to accept capacity release on behalf of its customers in each of its gas service areas. For Boston Gas and Colonial Gas customers, the initial block is 500 Dth per day. For Essex Gas it is 200 Dth per day. Subsequently, a marketer is not required to take additional capacity until its pool grows by more than 150 Dth per day. Thus, marketers are assured of having a sizable volume prior to being assigned capacity by the LDCs.

2. Capacity Mitigation Service

Pursuant to its T&Cs, KeySpan offer a capacity mitigation service available to any marketer that is assigned capacity. This service provides the opportunity for marketers to have the LDC aggregate and market on behalf of the marketer any capacity that a marketer chooses not to accept. This directly addresses marketers' concerns that they are "stranding" capacity.

B. Additional Initiatives to Lessen Administrative Burdens on Marketers

Since the slice-of-system approach was adopted by the Department, KeySpan has initiated a number of changes to make that approach easier for marketers to use. KeySpan has (1) streamlined its portfolio; (2) improved its capacity release program to consolidate receipt and delivery points in each zone; (3) created capacity release communication tools; (4) developed a

[7] In conjunction with the slice-of-system approach, LDCs also agreed to minimize their capacity assignment portfolio by not assigning the former F2/F3 Algonquin Gas Service area path

company managed contract service system ("CMCS"); and (5) identifies nomination errors on behalf of marketers and allows unlimited intraday corrections to nominations by marketers.

1. KeySpan's Streamlined Portfolio Reduces Marketers' Administrative Burden

KeySpan has worked diligently to restructure its portfolio and has informed the marketers of these changes through annual contract negotiation letters sent by the Company. Over the past five years, KeySpan has terminated several storage and transportation contracts consisting of smaller volumes coming from a number of different pipelines that were assigned to KeySpan as a result of FERC Order 636. At the same time, KeySpan has been able to combine various other contracts resulting in a further decrease of the number of storage and transportation contracts. KeySpan also has been aggressively converting its "7C" contracts to Part 284 contracts which, under FERC rules, allows KeySpan and the marketers greater flexibility on the pipelines by allowing capacity release, segmentation and deliveries to other than primary points. Last year, KeySpan terminated and replaced three of its Canadian supply contracts. The replacement contracts provide the marketers and KeySpan with flexibility to decline the supply without paying the "take-or-pay" demand charges. Over the past year, only one marketer declined the supply. In addition, KeySpan allowed marketers to submit one standing nomination form for this supply in lieu of providing monthly nomination forms so that marketers could easily avoid missing the nomination deadline.

2. KeySpan Improved its Capacity Release Program to Consolidate Receipt and Delivery Points in Each Zone

KeySpan administers capacity release programs for each of its three LDCs in Massachusetts and one in New Hampshire. KeySpan consolidates the number of points on each of its releases in order to minimize the number of nominations and therefore the complexity of the nominating process. For example, KeySpan's Boston Gas Company/TGP longhaul contract has 17 receipt points in three receipt zones and 14 delivery points into KeySpan's distribution service territory. Under this contract, as well as others, KeySpan releases larger volumes at one receipt or delivery point rather than many in each zone. This approach simplifies nominations for marketers by reducing the fragmentation of the contracts.

3. KeySpan's Capacity Release Communication Tools Afford Marketers Complete Information to Execute Releases and Update their Portfolios

KeySpan's capacity release offer letter is a template listing all contracts for each of the four KeySpan New England LDCs, by pipeline. If a marketer's capacity assignment changes due to modifications to one or more of its LDC's aggregation pools, KeySpan emails the template to the marketer by the fifth business day prior to the end of the month. And at Energy East's request, KeySpan provides this information prior to the releases being performed. The template contains all the information that the marketer will require to execute the release: the contract number, the offer number, and the new released volume. In addition to this notification, KeySpan sends the marketers their volumes of LDC-managed supply and storage transfers by the eighth business day prior to the end of the month so that the marketer has sufficient time and information to make its decisions.

4. KeySpan's Company-Managed Contract Services Assists Marketers

KeySpan has developed its Company Managed Contract Services ("CMCS") system that performs the capacity assignment allocations for each marketer pool by load factor from among its long haul, storage and peaking contracts. The system also produces invoices at month end for managed capacity contracts and storage transfers. It also maintains marketers' managed storage and peaking supply balances that are provided to the marketers each month. Changing from the current slice-of-system to a path approach would necessitate a complete overhaul of the CMCS system and would require significant expenditures.

5. KeySpan Identifies Nomination Errors on Behalf of Marketers

KeySpan identifies nomination errors and discrepancies in city gate volumes and communicates them to marketers so that they have ample time to correct errors related to nominations. In fact, KeySpan has created a system report that will identify any differences between the estimated non-daily metered Adjusted Target Volumes (“ATV”), which KeySpan has provided the marketer, and the sum of each marketer’s non-daily nominations. When a discrepancy is identified, KeySpan communicates it to the marketer in order for the marketer to reallocate its supply or correct any nominations if necessary. In addition, KeySpan provides significant flexibility by allowing numerous intraday nominations prior to the end of the gas day.

In implementing the current slice-of-system approach available to Massachusetts customers, KeySpan has proactively taken these steps to address the concerns being raised by marketers. Whereas the Department initially found that mandatory slice-of-system approach resulted in a fair market regime for marketers, LDCs and customers (D.T.E. 98-32-B at 34), KeySpan’s efforts have continued to make that so.

C. The Rhode Island Progam is not Instructive for Massachusetts

The Rhode Island experience is not instructive for Massachusetts. Energy East who recommended the Rhode Island “path” approach has neglected to address basic characteristics of the unbundling program in Rhode Island that differentiates it from Massachusetts. It is not appropriate to assume that limited sections can be extracted from one comprehensive set of T&C and be "inserted" into another comprehensive set of T&Cs and work effectively. The Rhode Island program is far less comprehensive than that of Massachusetts. Capacity assignment in Rhode Island is available only to large and medium C&I customers – not to any small C&I customers or residential customers. Thus the potential load migration is limited. Rhode Island's path approach is limited to a set number of paths determined by the LDC. These are just some of the differences between the Rhode Island and Massachusetts unbundling programs. Moreover, the path aspect of the Rhode Island program is only one component of a complex set of unbundling terms and conditions with different risks and protections. It is not legitimate to take this one term, path assignment, out of context and claim it is applicable to Massachusetts.

In conclusion, the marketers have not provided reasons sufficient for the Department to reconsider the slice-of-system approach. There has been considerable LDC investment to implement and refine it, and—for all the reasons KeySpan addressed in its initial comments—it provides the most protections to customers while maintaining a fair treatment of marketers.

III. KeySpan Seeks to Resolve the Marketers' Operational Issues

Hess and Energy East have requested that the following operational matters be addressed: (1) modify the LDCs' T&Cs on monthly releases and recalls; (2) change the imbalance penalties in the T&Cs; (3) synchronize nomination schedules over holiday periods with gas industry practice; and (4) correct perceived problems with LDC algorithms used for non-daily metered customers. Hess Initial Comments at 7-9, Energy East Initial Comments at 11-13. Other than the imbalance penalty issue, these other issues have been or will be resolved through accommodations that fit within the parameters of the T&Cs.

A. Monthly Releases and Recalls

Hess explains that the monthly releases and recalls of capacity practiced by the LDCs are administratively burdensome, causing the marketers economic harm, and it proposes that LDCs release a baseload level of capacity associated with a marketer's load for one year. Hess Initial Comments at 7-8. However, KeySpan does not release and recall capacity on a monthly basis. As required under § 13.5.2 of its T&Cs, KeySpan generally releases its capacity to marketers through the termination date of each contract.

An exception to this is when the aggregation pool served by a marketer increases or decreases its capacity volumes by 150 dekatherms or more requiring an adjustment to the number of capacity blocks released. Any changes to a marketer's capacity as a result of gaining or losing customer load are administered according to each upstream pipeline's capacity release rules.

B. Imbalance penalties

Hess asserts that the Operational Flow Order ("OFO")[8] imbalance penalties approved by the Department and instituted by the LDCs are excessive and should be reduced to two times the Gas Daily index vs. the current penalty of five times the Gas Daily index. Hess Initial Comments at 8-9. KeySpan disagrees. The purpose of the penalty is to ensure that marketers do not cause upstream pipeline OFO imbalance penalties to the LDC, not to set penalties at a level where the marketer may find it economic to accept them. To maintain the same economic disincentive, these penalties must move in parallel with market prices.

Although Hess asserts that the penalty is severe at five times Gas Daily Index, experience shows that even at this level of disincentive to under deliver, marketers did in fact under deliver

[8] An OFO is issued by an LDC pursuant to § 19.2 of the T&Cs because circumstances exist that constitute a threat to the operational integrity of the LDC's system. Such circumstances include, but are not be limited to: (1) a failure of the Company's distribution, storage or production facilities; (2) the near-maximum utilization of the Company's distribution, storage, production, and supply resources; (3) inability to fulfill firm service obligations; and (4) issuance of an OFO or similar notice by upstream transporters.

during the January 2004 cold snap. This would support an increase, not decrease, in the penalty provision.

C. Correct the Operational Mismatch of Holiday Nomination Schedules

Gas industry holidays do not always match KeySpan's business holidays. The concern raised by Energy East regarding application of the industry standard for nominations for holiday periods is an issue that KeySpan has recognized. In fact, KeySpan has recently accommodated marketers on this issue and now follows the gas industry standard of requiring nominations on the business day prior to the gas industry holiday. To the extent that Energy East's concern is that LDCs have not issued ATVs for their non-daily metered pools rather than holiday nomination cycles, KeySpan recently addressed this concern as well. At the marketers' request, KeySpan now calculates and communicates ATVs in accordance with gas industry holiday schedules.

D. Ensure Suppliers Have Access (by meter) to the Baseload and Temperature Sensitive Components of the Algorithms Used for Non-Daily Consumption.

This issue has been raised by Energy East. Energy East Initial Comments at 12. KeySpan provides complete electronic data to marketers upon request. This data includes for each marketer, by LDC, the customer's name, account number, rate classification, baseload volume, heating factor, capacity assignment volume, receipt point, billing cycle, original transportation date and start date with current marketer, and whether the customer is daily or non-daily metered.

E. Correct the Algorithm for Summer Months that Include a Factor for Temperature Sensitive Usage Where Such Temperature Sensitive Usage Does Not in Fact Occur.

Energy East has raised the issue of whether the algorithm for the summer months includes a factor for temperature sensitive usage. Energy East Initial Comments at 12-13.

KeySpan recognizes that temperature sensitive usage is not likely to occur during the summer months. The Company will undertake a review of the algorithm, including the source data and load profile aspects of marketer pools to determine if changes are necessary.

IV. The Attorney General's Concerns Are More Appropriately Addressed in Other Department Proceedings

The Attorney General is the only party that has requested that this matter be expanded to an investigation of LDC planning practices and the price volatility of supply for firm customers. Attorney General Initial Comments at 3-5. There are other proceedings that afford the Department, the Attorney General, and other interested parties the opportunity to address such issues. As noted above, Massachusetts LDCs are required by statute to file periodically long-range forecast and supply plans. An investigation into how LDCs plan and procure supply and capacity is better taken up in a forecast and supply investigation.

In addition, mitigation of price volatility is not related to the issue of whether the Department should reconsider mandatory capacity assignment or address the operational issues that have been raised in the comments filed. The Department's notice in this proceeding was focussed narrowly, "The objective of this proceeding is to determine whether the upstream capacity market is sufficiently competitive to warrant … the Department allowing voluntary assignment of interstate capacity rights by G.L. c. 164 gas companies to other entities." Order Opening Investigation on Assignment of Interstate Pipeline Capacity, D.T.E. 04-1 (2004). Therefore, the Department should not expand the subject matter of this investigation.[9]

[9] Should the Department address the mitigation of price volatility in a proceeding, the request of the Attorney General for (i) LDC cost savings that customers might have experienced over the past five years if the LDCs had purchased 50 percent of their annual natural gas supplies on a fixed-price basis and (ii) a comparison of KeySpan's actual CGA rates to what they would have been if KeySpan's cost-averaging volatility-mitigation program had been in place the previous three peak seasons--should be rejected. First, to address the "road not taken" of gas purchases is not practical nor is it likely to be accurate. Second, the question is irrelevant. The purpose of KeySpan's price

V. Conclusion

The upstream capacity market at this time is not sufficiently competitive for the Department to consider modifying the existing mandatory, slice-of-system, capacity assignment method. Until the preconditions set by the Department have been met and there is a sustainable competitive upstream capacity market, and until the obligation to supply is removed from LDCs, LDCs must continue to plan for and procure the necessary upstream capacity to assure reliable supply at the lowest possible cost for all customers. It is through the continuation of mandatory capacity assignment that this best can be accomplished. And for all the reasons that the Department stated in D.T.E. 98-32-B, the continuation of mandatory assignment concomitantly requires the continuation of the slice-of-system approach to capacity assignment.

As marketers have informed the Company of their administrative and operational concerns, KeySpan has adjusted its implementation of mandatory, slice-of-system, capacity assignment to accommodate marketer needs and, as addressed above, will make certain further adjustments requested by marketers.

KeySpan thanks the Department for the opportunity to address this issue.

Respectfully submitted,

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stability program is not to achieve lower prices. Fixing the price of gas over several months in advance of the month of consumption ("cost-averaging") can be expected, over the course of time, to lead to higher prices 50 percent of the time and lower prices 50 percent of the time. But the cost-averaging approach will moderate the volatility of gas prices for customers; that is the relevant objective.

KeySpan Energy Delivery New England

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